IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8580 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JHAGADIA COPPER LTD AND ANOTHER
Versus
STATE OF GUJARAT PRINCIPAL SECRETARY AND ANOTHER

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Appearance :
MR KS NANAVATI for the Petitioners
MS AC RAVAL, ASSISTANT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 18/07/2006

ORAL JUDGMENT

1. **RULE**. Ms.Archana C.Raval, the learned Assistant Government Pleader waives service of rule on behalf of the respondents.

2. Present is the petition filed by Jhagadia Copper Limited (formerly known as SWIL Limited) for the relief that after quashing the orders rejecting the petitioner company's representations at (Annexures O, R and W),

direct the respondents to extend the benefit of the incentive scheme of 1995 to the petitioner company.

3. Mr.K.S.Nanavati, learned senior counsel appearing for the petitioners submitted that from the communication received by the petitioner company it transpires that there was some bonafide error, may be on account of some communication gap that the request of the petitioner company for condoning the brake in continuing the commercial production from 15.08.2003 to 10.04.2004 is considered as request for , 'extension of time' to start the commercial production.

The learned senior counsel submitted that the unit was registered as a 'premier unit' in the scheme of 1995-2000 and by virtue of that registration as 'premier unit', it was entitled to certain benefits from the Government. To avail of those benefits, the unit was under an obligation to start the commercial production by 15.08.2003. The learned counsel submitted that in fact, on 12.08.1003, the petitioner unit did undertake the commercial production, but on account of some technical difficulties, which were beyond the control of the petitioner unit, the production was required to be stopped. Those technical difficulties were of such nature that removal took some time and the production could then be undertaken only on 10.04.2004.

The learned counsel submitted that despite its

representations to the authorities including the Industries Commissioner, who in turn was to forward the representations made by the petitioner to the State Government. The representations of the petitioner were to be considered by 'State Level High Power Committee' (“SLHPC”, for short). The communications received by the petitioner do not mention that the representations of the petitioner were considered by the SLHPC. It only mentions that, 'the State Government has not exceeded to the request made by the petitioner'.

4. The learned senior counsel submitted that it is for the first time from the affidavit filed by Shri R.P.Mehta, Joint Commissioner, Industries dated 05.05.2006 wherein paragraph No.8 it is stated that, “..... The case of the petitioner was examined by the Higher Level Committee which has not thought it fit to condone the period.....”, the petitioner is conveyed that the representation made by the petitioner was considered by SLHPC.

The learned senior counsel submitted that the petitioner unit has come into existence with the assistance of various financial institutions like ICICI Bank Limited, GIIC Limited, IDBI Limited, Life Insurance Corporation of India, UTI (Unit Trust of India), GSFC Limited, General Insurance Corporation of India Limited

(GIC) and others. The total stake of these institutions is as high as 60%. He submitted that thus it will be in the fitness of things and in the interest of all concerns including the aforesaid financial institutions, if the case of the petitioner is considered by the SLHPC afresh, preferably by granting an opportunity of personal hearing to the petitioner or atleast allowing the petitioner to place a detailed representation in addition to its earlier representations to aviod any communication gap.

5. Ms.Archana C.Raval, the learned Assistant Government Pleader appearing for the respondents made available the file for perusal of this Court. It is on record that the SLHPC meeting was held on 30.03.2005. She submitted that this was the 35th meeting of SLHPC in which the case of the petitioner was considered.

6. It is revealed from the minutes of the meeting that it was held under the Chairmanship of the Hon'ble the Chief Minister. On careful consideration of the facts of the case, it is deemed fit that the authorities be directed to consider the case of the petitioner once again, by taking note of 'the factors' on account of which the petitioner unit could not continue its production after having commenced the same on 12.08.2003 and could not recommence until 10.04.2004. The SLHPC should give a pointed attention to these facts.

Besides, there are two other important factors which are required to be taken into consideration by the SLHPC, (i) the unit is a 'premier unit' and (ii) about 60% of the stake is that of the financial institutions. Now that the unit has commenced its commercial production on 10.04.2004 and has continued till date, the case deserves to be considered for condoning the 'brake' between 12.08.2003 to 10.04.2004.

7. With the aforesaid observations, the petitioner is directed to file a detailed representation to the respondent authorities on or before 21.08.2006. The respondent authorities (SLHPC) shall conside the case of the petitioner afresh, taking into consideration the observations made hereinabove and other material facts which may be placed before it by way of representation, as early as possible preferably within 10 weeks from the date of receipt of the representation. The petition is disposed of with the aforesaid observations. Rule is made absolute to the aforesaid extent with no order as to costs.

(RAVI R.TRIPATHI, J.)

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